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July 28, 2004

### **FILED ELECTRONICALLY**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street SW, Room TW-A325  
Washington, DC 20554

Re: Ex Parte Presentation in MB Docket Nos. 04-61 (Digital Output Protection Technology and Recording Method Certifications: High Bandwidth Digital Content Protection); 04-62 (Digital Output Protection Technology and Recording Method Certifications: Content Protection Recordable Media for Video Content); 04-64 (Digital Output Protection Technology and Recording Method Certifications: Digital Transmission Content Protection)

Dear Ms. Dortch:

I write on behalf of the Motion Picture Association of America, Inc., and its member companies (the "MPAA Parties"). We understand that arguments have recently been made to the Commission that it should delay or condition approval of several certifications, including those submitted by DTLA and 4C, pending a review or change of the licenses included with those technologies. In particular, it has been suggested that the Commission should further review and/or condition its approvals on a change of the "non-assert" provisions of the licenses at issue, which require that manufacturer licensees agree not to assert "necessary" claims against other participants in the system. It has been asserted that a failure to do so could result in an anticompetitive impact on the market for content protection technologies.

We believe these concerns are unwarranted, and that the Commission should not delay the interim certification proceedings or condition any approvals because of them. It is critically important that the Broadcast Flag regulation proceed to implementation with an abundant variety of approved technologies that offer sufficient safeguards to meet the overall goals of the

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Ms. Marlene H. Dortch

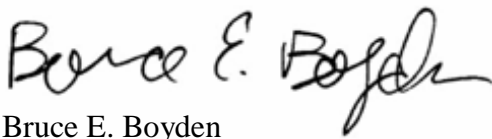
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regulation. Content providers such as the member companies of the MPAA benefit directly from competition in the content protection market and the wide availability and deployment of such technologies. We believe that when licenses grant any “necessary” or “essential” rights to licensees to practice the technology’s specification, it is reasonable and hardly anticompetitive to seek to reduce transaction costs, clear blocking positions, and avoid costly infringement litigation by having adopters agree not to assert any “necessary” claims they hold within the scope of the specification against any other participants in the system. Other bodies, such as the DOJ Antitrust Division and the Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights have been asked to review this same issue and have declined to act. The Commission should likewise proceed apace and not delay or deny approvals based on claimed anticompetitive effects of non-assert provisions.

In accordance with Section 1.1206 of the Federal Communications Commission rules, one copy of this notice is being filed electronically.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce E. Boyden". The signature is fluid and cursive, with the first name "Bruce" and last name "Boyden" clearly distinguishable.

Bruce E. Boyden

cc: Catherine Bohigian  
Jon Cody  
Stacy Fuller  
Jordan Goldstein  
Johanna Shelton